HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition Nos.11215, 11501, 11513, 11514 & 11515 of 2004

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Writ Petition No.11215 of 2004

Between:

The Municipal Corporation of Kurnool rep.
by its Commissioner, Smt.K. Vijayalakshmi
... Petitioner

And

A. Padma Reddy and another
... Respondents

Writ Petition No.11501 of 2004

Between:

The Municipal Corporation of Kurnool rep.
by its Commissioner, Smt.K. Vijayalakshmi
... Petitioner

And

S. Ibrahim Saheb and another
... Respondents

Writ Petition No.11513 of 2004

Between:

The Municipal Corporation of Kurnool rep.
by its Commissioner, Smt.K. Vijayalakshmi
... Petitioner

And

U. Lakshmana Swamy and another
... Respondents

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Writ Petition No.11514 of 2004

Between:

The Municipal Corporation of Kurnool rep.
by its Commissioner, Smt.K. Vijayalakshmi
... Petitioner

And

Chinna Laxmamma and another
... Respondents

Writ Petition No.11515 of 2004

Between:

The Municipal Corporation of Kurnool rep.
by its Commissioner, Smt.K. Vijayalakshmi
... Petitioner

And

M. Gangadhar and another
... Respondents

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:: ORDER ::

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Counsel for Petitioner Corporation: Shri S. A. Chari

Counsel for Respondent No1 in
all the writ petitions: Shri P. Raghavender Reddy

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January 17, 2007

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Per G.S. Singhvi, CJ

These petitions filed by the Municipal Corporation of Kurnool for quashing order dated 4-5-2005 passed by Chairman-cum-Presiding Officer, Industrial Tridunal-cum-Labour Court, Anantapur in I.A.No.413 of 2003 (I.D.No.77 of 2003) and batch have been listed before the Division Bench for determination of the following question of law:

> "Whether Rule 11 (6) and Form K-4 of the Andhra Pradesh Industrial Disputes Rules, 1958 are mandatory or directory?

The background facts:

In the year 1989, the Government of Andhra Pradesh, after noticing that the practice of engaging daily wage employees and demand for regularisation of such employees has been resulting in over-staffing in the local bodies, issued Memo No.102191/ ESTT/IV/88-1 dated 9-1-1989, whereby the Gram Panchayats were permitted to get the work relating to sweeping of roads, cleaning of side drains, maintenance of water supply, electricity and scavenging done on contract basis by meeting the expenditure from out of their own funds.

In furtherance of the above noted policy of the State Government, Kallur Gram Panchayat (for short, 'the Gram Panchayat'), after seeking permission from District Panchayat Officer, Kurnool called for tenders in the year 1993 for engaging Sanitary Mistries, Sweepers, Scavengers, Fitters, Pump Operators, Tractor Drivers, Coolies, Electricians, Watchmen and Motor Mechanics.

Respondents No.1 in these petitions (who shall hereinafter be collectively described as workmen), submitted their tenders. Since their tenders were found lowest, the Gram Panchayat engaged them on contract basis for a period of one year. They were paid out of the funds of the Gram Panchayat. Their work was controlled and supervised by the authorities of the Gram Panchayat. The term of their contract was renewed/fresh contracts were entered by increasing the amount by 10% over the earlier rate of contract. This continued till the merger of the Gram Panchayat with the petitioner Corporation in terms of G.O.Ms.No.68, Municipal Administration, dated 8-2-2002, pursuant to which, the services of the workmen were also taken over by the petitioner Corporation. They worked in the Corporation till March 2003. In the meanwhile, the petitioner Corporation issued tender notice dated 9-1-2003 for maintenance of water supply and distribution in Kallur area and awarded contract to the lowest tenderer G. Lakshmi Reddy. As a sequel to this, services of the workmen were discontinued.

While they were still working under the Gram Panchayat, some of the workmen filed Writ Petition No.24024 of 2000 for issue of a direction to the Gram Panchayat to regularise their services. The same was disposed of by the High Court with an observation that the petitioners can avail remedy by approaching the Labour Court. Some others filed O.A.No.7365 and 7367 of 1999 before the Andhra Pradesh Administrative Tribunal for similar relief. Both the applications were dismissed as not maintainable on the ground that the Tribunal does

not have the jurisdiction to decide disputes which can appropriately be raised under the Industrial Disputes Act, 1947 (for short, 'the Act'). Another batch of workmen filed Writ Petition Nos.24245 and 23486 of 2000 for regularisation of service, but they were allowed to be withdrawn without prejudice to their right to workout their remedies in the Labour Court.

Immediately after termination of their services in March 2003, the workmen filed applications under Section 2-A (2) of the Act as amended by Andhra Pradesh Act No.32 of 1987. The same were registered as I.D.Nos.77, 82, 6, 7 and 8 of 2003. On being noticed by Industrial Tribunal-cum-Labour Court, Anantapur (hereinafter referred to as 'the Labour Court'), the Corporation filed Writ Petition No.20232 of 2003 and batch for issue of a writ of prohibition restraining the Labour Court from adjudicating the dispute raised by the workmen. According to the petitioner Corporation, the applicants were engaged on contract basis by the erstwhile Gram Panchayat and, as such, there did not exist master-servant relationship which could justify filing of an application under Section 2-A (2).

During the pendency of the writ petitions, the petitioner Corporation filed interlocutory applications before the Labour Court and raised various objections to the maintainability of the applications filed by the workmen. Therefore, the learned Single Judge dismissed the writ petitions with a direction to the Labour Court to dispose of the applications filed by the Corporation and decide the nature of employment of the workmen and its

jurisdiction to entertain the claim made by them by treating the same as preliminary issue. The operative part of order dated
26-9-2003 passed by the learned Single Judge reads as under:

> "The writ petitions are, therefore, dismissed. However, having regard to the facts and circumstances of the case, I direct the second respondent-Tribunal to dispose of the applications filed by the petitioner, if necessary by recording evidence, to decide the nature of employment and jurisdiction to entertain such claims, as preliminary issue, as expeditiously as possible, preferably within a period of two months from the date of receipt of this order. No costs."

Writ Appeal Nos.1947 and 1948 of 2003 preferred by the petitioner Corporation against the order of the learned Single Judge were dismissed by the Division Bench vide its order
dated 7-11-2003.

Two of the writ petitions filed by the petitioner Corporation, which were registered as Writ Petition Nos.24058 and 21096 of 2003 were dismissed by another learned Single Judge by recording detailed order dated 6-11-2003. The learned Single Judge held that once the workmen have averred that they were directly engaged and paid by the Corporation, they will be deemed to be the employees of the Corporation and, as such, the applications filed by them under Section 2-A (2) of the Act are maintainable and the Tribunal cannot be restrained from adjudicating the same.

Writ Appeal Nos.2224 and 2235 of 2003 filed by the

petitioner Corporation were allowed by the Division Bench on
19-12-2003 and liberty was given to it to raise all legally permissible objections regarding the nature of employment and jurisdiction of the Labour Court to entertain the claim of the workmen.

After disposal of the writ appeals filed by the petitioner Corporation, the Labour Court framed the following points for disposal of the interlocutory applications:

1) Whether there is Master and Servant relationship between the respondent and the petitioners?
2) Whether the Service Certificate and the Acquittance resigters (xerox copy) be relied upon? Whether an adverse inference has to be drawn against the respondent for non-production of documents?
3) Whether the termination after expiry of contractual period by afflux of time does not attract Section 2 (OO) and 25-F of the Industrial Disputes Act, 1947?
4) Whether the petitions are not maintainable under Section 2-A (2) of the Industrial Disputes Act, 1947?

The workmen examined three witnesses and produced documents, which were marked as Exs.W.1 to W.67. The Corporation did not examine any witness, but produced documents marked as Exs.M.1 to M.16.

The learned Presiding Officer of the Labour Court briefly noted the contents of the applications filed by the workmen, the objection raised on behalf of the petitioner Corporation, analysed the evidence of the parties,

considered the arguments of their advocates and decided all the points in favour of the workmen. Since we are not adjudicating on the legality of the order passed by the Labour Court, we do not consider it necessary to make a detailed reference to the order, which is impugned in the writ petitions. However, paragraph 32 thereof, which gives a broad picture of the nature of employment of the workmen, is reproduced below:

> "In this case, admittedly the petitioners are entrusted with the work of water supply and maintenance, sanitation and public health maintenance of electrical works etc. It is also not in dispute that these are the works of the respondent. This means that the petitioners rendered services for the respondent. It is also not in dispute that the work allotted to the petitioners is still available and it is perennial in nature. It has also come in evidence that the petitioners are also directly paid by the Kallur Gram Panchayat after merger of Kallur Gram Panchayat with the respondent Corporation by the respondent. W.W.1 and W.W.2 have deposed that the Kallur Gram Panchayat used to supervise their work regularly and subsequently the Kurnool Municipal Corporation authorities used to supervise their work. So, from the evidence it is clear that the petitioners worked for the respondent and they are paid by the respondent and their work is supervised by the officials of the respondent."

While dealing with Point No.4, the Labour Court took cognizance of the objection raised on behalf of the petitioner Corporation that the application had not been filed by the workmen in the prescribed form and held as under:

> "It is true that Form K-4 envisages that the application should serve a demand letter by

registered post with acknowledgement due on the management to reconsider its decision of termination. It has to be seen that in the Format it is mentioned that the said Form pertains to sub-rule 6 of Rule 11 of A.P. Industrial Disputes Rules, 1958. Sub-Rule 6 of Rule 11 envisages that the workman discharged, dismissed, retrenched or otherwise terminated from service and who desires to represent his dispute directly for adjudication shall submit an application in Form K-4 duly signed by him to the said court along with as many as spare notices as there are opposite parties. It has to be seen that Form K-4 is only a Format prescribed for the presentation of that application under Section 2-A (2) of the Industrial Disputes Act, 1947. It is not mandatory. Nothing has been shown that the claim petition filed under Section 2-A (2) of the Industrial Disputes Act has to be straight away dismissed for non-compliance of the Format. When it is the case of the respondent that they have allotted a work to the contractor Lakshmi Reddy by inviting tenders and had taken a specific stand that there is no relationship of Master & Servant between it and the petitioners, it appears that no useful purpose would have been served even if the petitioners sent a representation to reconsider the decision of termination. The purpose of issuing letter by registered post is to avoid future litigation. It is not the case of respondent that it would have considered the case of petitioners had they sent a demand letter. It appears that a party cannot be denied substantial justice merely on the ground of technicalities. It is also settled law that strict rules of evidence of technicalities cannot come in the way of doing justice particularly in cases arising under the provisions of Industrial Disputes Act, 1947 which is a beneficial legislation."

In the writ petitions filed by it, the petitioner

Corporation has questioned the findings recorded by the Tribunal on all the four points. The case set up by the Corporation is that the applicants do not fall within the definition of 'workman' under Section 2 (s) of the Act and, as such, the applications filed by them under Section 2-A (2) seeking adjudication of the so-called dispute relating to the termination of their services cannot be adjudicated by the Labour Court. Another plea taken by the Corporation is that the applications filed under Section 2-A (2) are liable to be dismissed because of non-compliance of the mandate of Rule 11 (6) of the Andhra Pradesh Industrial Disputes Rules, 1958 (for short, 'the Rules') read with Form K-4.

Before the learned Single Judge, it was argued by the counsel for the workmen that the writ petitions should be dismissed and the petitioner Corporation should be left free to raise objections to the maintainability of the applications filed by the workmen only after final adjudication of the disputes by the Labour Court. The learned Single Judge did not accept this submission and, after noticing the arguments of the learned counsel for the parties and apparently conflicting views expressed by two learned Single Judges in **Oil and Natural Gas Company Limited v. N. Satyanarayana**[1] and Writ Petition No.380 of 2005 – M. Narasaiah v. Presiding Officer decided on 1-2-2005, on the interpretation of Rule 11 (6) of the Rules, referred the matter to the Division Bench for determination of the question, which has been reproduced in the opening paragraph of this order.

Arguments:

Shri S.A. Chari, learned counsel for the petitioner argued that Rule 11 (6) of the Rules is mandatory in character and an application filed by the workman without taking steps enumerated in Form K-4 is liable to be dismissed. Shri Chari laid emphasis on the expression 'in the prescribed manner' appearing in sub-section (2) of Section 2-A and argued that the Labour Court gets jurisdiction to adjudicate the dispute relating to discharge, dismissal, retrenchment or termination of the services of the workman only if an application is filed after serving notice of demand on the employer for re-consideration of its decision to discharge/dismiss/retrench the workman and a period of 15 days has elapsed. He then submitted that the applications filed by the workmen do not satisfy the requirement of Form K-4 inasmuch as, they did not serve demand letter on the competent authority of the petitioner Corporation by registered post for re-consideration of its decision to discontinue their services and, therefore, the Labour Court cannot entertain and adjudicate the so-called dispute raised by them. Learned counsel submitted that when the legislature has prescribed the mode of filing application under Section 2-A (2), and also prescribed the format in which such an application is to be filed, the Labour Court cannot entertain an application filed without fulfilling the conditions specified in the statute. In support of his arguments, Shri Chari relied on the judgments of the

Supreme Court in **Bhikraj Jaipuria v. Union of India**[2], **Express Newspapers v. Their Workers**[3], **Shambhunath Goyal v. Bank of Baroda**[4], **National Council for Cement & Building Materials v. State of Haryana**[5], **Banarsi Dass v. Brig. Maharaja Sukhjit Singh**[6], **Rai Vimal Krishna v. State of Bihar**[7], **Krishna Bahadur v. Purna Theatre**[8] **State of U.P. v. Jai Bir Singh**[9] and **Sk. Salim Haji Abdul Khayumsab v. Kumar**[10].

Learned counsel for the workmen argued that Rule 11 (6) is procedural in nature and, therefore, the same cannot be treated as mandatory and non-submission of application by the workmen in Form K-4 or non-fulfillment of the condition of issuing demand letter to the petitioner Corporation is not sufficient to denude the Labour Court of the jurisdiction to adjudicate the dispute. He emphasized that the decision of the petitioner Corporation to discontinue the services of the workmen clearly falls within the ambit of Section 2-A, and argued that the Labour Court is duty bound to adjudicate the dispute on merits. He then submitted that the petitioner Corporation does not have the locus to raise an objection to the maintainability of the applications filed by the workmen because it had opposed the writ petitions filed by them on the ground of availability of alternative remedy under the Act.

We have considered the respective submissions.

For deciding the question noted hereinabove, it will be useful to notice the relevant statutory provisions. The same read as under:

Sections 2(k), 2-A, 10 (1) and 12 of the Industrial Disputes Act, 1947

2. Definitions:

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

2-A. Dismissal, etc., of an individual workman to be deemed to be an Industrial Dispute:

1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

2) Notwithstanding anything in section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in. accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation

to any other industrial dispute." (Inserted by A.P. Act No.32 of 1987 w.e.f. 27-7-1987)

10. Reference of disputes to Boards, Courts or Tribunals:

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Labour Court for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in

relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government;

12. Duties of conciliation officers:
(1) Where an industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Govern- ment a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

Provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

Rules 9, 10 and 11 of the Andhra Pradesh Industrial Disputes Rules, 1958:

Part III

9. Powers, procedures and duties of Conciliation Officers, Boards, Labour Courts, Tribunals, Arbitrators:

1) The Conciliation Officer, on receipt of a notice of a strike or lock-out given under Rule 73 or Rule 74 shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.
2) Where the Conciliation Officer receives no notice of a strike or lock-out under Rule 73 or Rule 74 but he considers it necessary to intervene in the dispute he may give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect

from such date as may be specified therein.

10. Conciliation proceedings in non-public utility service:

Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

11. Parties to submit statement:

1) The party representing workmen involved in an industrial dispute in a public utility service shall forward a statement of its demands along with a copy of the notice prescribed under Rule 73 to the Conciliation Officer concerned. The statement shall be accompanied by as many spare copies thereof as there are opposite parties.

2) The party representing workman involved in a dispute in a non-public utility service or in a dispute in a public utility service, where no notice of strike is given under sub-rule (1) of Rule 73 or the case of an individual workman, who is himself involved in an industrial dispute shall forward a statement of its or his demands to the Conciliation Officer concerned before such date as may be specified by him for commencing conciliation proceedings. The statement shall be accompanied by as many spare copies thereof as there are opposite parties.

3) The statement of demands submitted by the individual workman or by the party representing the workmen under sub-rule (1) or sub-rule (2) shall be transmitted to the State Government by the Conciliation Officer concerned with his report under sub-section (4) of Section 12.

4) Where an employer, or an individual workman or a party representing workmen, applies to the State Government for reference of an industrial dispute to a Labour Court or Tribunal, such application shall be accompanied by a statement of the demands with as many spare copies thereof as there are opposite parties.

5) The statement referred to in sub-rules, (1), (2) and (4) and every copy thereof required under the said sub-rules to accompany the said statement shall be duly signed, on behalf of the party, by the person making it.

6) The workmen discharged, dismissed, retrenched or otherwise terminated from service and who desires to represent his dispute to the Labour Court directly for adjudication, shall submit an application in Form K-4 duly signed by him to the said Court with as many spare copies thereof as there are opposite parties."

Form-K-4 given in Part-II of Appendix-B enclosed with the Andhra Pradesh Industrial Disputes Rules, 1958.

FORM-K-4

(See sub-rule (6) of Rule 11)

Application by a workman under sub-section (2) of Section 2-A of the Industrial Disputes Act, 1947 (Central Act No.14 of 1947).

BEFORE THE LABOUR COURT AT .....

Between:

I .....(Applicant)

And

.....(Employer)

The applicant ..... S/o. ..... aged ..... years was working as ..... M/s.

.....
and was discharged/dismissed/retrenched/terminated from service by the said employer on .....

The applicant was drawing a wage of Rs. .....per month at the time of his discharge/dismissal/retrenchment /termination:

The applicant served a demand letter by registered post with acknowledgment due on the management on ..... to re-consider its decision of discharge/dismissal /retrenchment/termination from service and to take him back in service, with service benefits.

The management even after 15 days from the date of receipt of the said demand letter did not reply/re-consider his case.

The management replied to the applicant on ..... to the effect that it is not in a position to re-consider the decision already taken.

The applicant hereby declare that he did not approach any other authority or forum for getting the dispute settled/adjudicated.

The applicant prays that the Hon'ble Court may be pleased to adjudicate the dispute.

Details of the dispute are furnished in Annexure to this application.

Station: Signature of the Applicant &
Date: Full Address

ANNEXURE

(Here indicate the details of the dispute)

(Strike out portions inapplicable)

(Indicate name and address of the employer and also name of the Industrial Establishment/Factory in which the applicant worked)."

Before analyzing the above reproduced provisions and considering the rival submissions, we deem it relevant to notice the background in which Section 2-A

and sub-section (2) thereof were inserted in the Act.

Till 1957, there was a divergence of opinion amongst the High Courts and the Industrial Tribunals on the question whether an individual dispute can be regarded as an industrial dispute. Some High Courts and Tribunals took the view that a dispute between the employer and a single workman cannot be an industrial dispute whereas others took the view that it can be an industrial dispute. Some of the Courts took the view that although a dispute relating to an individual workman cannot

per se be treated as an industrial dispute if espoused by the Trade Union or a large number of workmen.

In **Central Provinces Transport Services v. Raghunath Gopal Patwardhan**[11], their Lordships of the Supreme Court examined this controversy and accepted the third view as laying down a correct law and held:

> "that an individual dispute cannot ordinarily be treated as an industrial dispute, but if such dispute is espoused by the Union or a substantial number of workmen employed in the establishment, such dispute will be treated as an industrial dispute."

In **Workmen v. Dharam Pal Prem Chand**[12], a Constitution Bench of the Supreme Court, after examining the various provisions of the Act, held as under:

> "Section 2 (k) of the Act defines an industrial dispute'. When literally construed, this definition may include within its scope a dispute between a

> single workman and his employer, because the plural, in the context, will include the singular. However, having regard to the broad policy which underlies the Act and in order to safeguard the interests of the working class in this country, the Supreme Court and indeed majority of Industrial Tribunals are inclined to take the view that in spite of the width of the words used by the Act in defining an "industrial dispute", it would be expedient to require that a dispute raised by a dismissed employee unless it is supported either by his Union or, in the absence of a Union, by a number of workmen, cannot become an industrial dispute. If such a limitation was not introduced, claims for reference may be made frivolously and unreasonably by dismissed employees, and that would be undesirable. However, considerations which would be relevant in dealing with a dispute relating to an individual employee's dismissal, would not be material in dealing with a case of dismissal on the same day of a large number of employees. These employees can raise a dispute by themselves in a formal manner."

These decisions caused great hardship to individual workman in the maters relating to dismissal, discharge, retrenchment etc. because the individual workman could not avail the remedy under the Act without the espousals of his cause by the Union or by a substantial number of employees of the establishment. Therefore, the Parliament amended the Act by Industrial Disputes (Amendment) Act, 1965 which was brought into force with effect from December 1, 1965. By this amendment, Section 2-A came to be inserted in the Act. By virtue of this section, any dispute or difference between a workman and his employer in relation to dismissal,

discharge, retrenchment or termination of his service is now deemed to be an industrial dispute even though such dispute may not be covered by Section 2 (k). Thus, by legislative fiction, an individual dispute has been converted into an industrial dispute. Thus, after insertion of Section 2-A, Section 2 (k) and Section 2-A will have to be read together while determining whether a dispute raised by the workman including a dispute raised by an individual workman in relation to termination of his service is an industrial dispute for the purposes of the Act.

Notwithstanding the fiction introduced by Section 2-A whereby an individual dispute in the matter of dismissal, discharge, retrenchment or termination of service of the workmen came to be treated as an industrial dispute, the working of the conciliation machinery envisaged under the Act proved to be extremely tardy. The demands raised by the workmen remained pending with the Conciliation Officers for years together apparently because the legislation does not prescribe any penalty for delay on the employer's part in ensuring expeditious conclusion of such proceedings. Even when the conciliation officers submit final reports, there have been long delays in making of reference. Not only this, in large number of cases, the State Government used to decline to refer the dispute on wholly extraneous, irrelevant and even frivolous grounds. Despite this dismal scenario, remedy available to the workman by raising an industrial dispute was treated by the Supreme Court as an effective alternative remedy for the purpose

of exclusion of the jurisdiction of the Civil Courts. In **Premier Automobiles v. K.S. Wadke** [13], the Supreme Court, after considering the definition of the expression 'industrial dispute', the word 'settlement', the provisions of Chapter II of the Act and making reference to the large number of judicial precedents, culled out the following propositions:

> "(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
>
> (2) If the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
>
> (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.
>
> (4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.
>
> (5) There will hardly be a dispute which will be an industrial dispute within the meaning of Section 2 (k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissed of an unsponsored workman which in view of the provision of law contained in S. 2A if the Act will be an industrial dispute even though it may otherwise be an individual dispute."

In **Rajasthan S.R.T. Corpn. v. Krishna Kant** [14], the Supreme Court re-considered some of the propositions laid down in **Premier Automobiles v. K.S. Wadke** (supra) and laid down the following principles:

> "(1) Where the dispute arises from general law of contract, i.e. where reliefs are claimed on the basis of the general law of contract, suit filed in civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A, of the Industrial Disputes Act, 1947.
>
> (2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.
>
> (3) Similarly, where the dispute involves the recognition, observance of enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 - which can be called 'sister enactments' to Industrial Disputes Act - and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2 (k) and Section 2-A of Industrial Dispute Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.
>
> (4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the

appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, the Supreme Court thought if fit to commend to the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court / Industrial Tribunal directly i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Sec. 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act are statutorily imposed conditions of service and are binding both upon the employer and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated above.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil Courts. Indeed, the powers of the Court and Tribunals

> under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

It is quite enlightening to notice that almost eight years before the judgment of the Supreme Court in **Rajasthan S.R.T.Corpn. v. Krishna Kant** (supra), the legislature of the State of Andhra Pradesh, after taking note of the long delays in the reference of the disputes raised by the workman in the matter of discharge, dismissal, retrenchment and termination of service, added sub-section (2) to Section 2-A and laid down the procedure for direct filing of application by the workman for adjudication of disputes relating to discharge etc. The State of Tamil Nadu followed the suit and made similar amendment by Tamil Nadu Act No.5 of 1988. Likewise, the State of Karnataka also added sub-section (2) to Section 2-A. Notice of this legislative measure was taken by the Supreme Court in **Hospital Employees Union v. Union of India**[15].

Analysis of the statutory provisions:

We shall now analyse the relevant provisions and also notice some judicial precedents.

The expression 'industrial dispute' defined in Section 2 (k) envisages existence of a dispute or difference between the parties in connection with employment or non-employment or terms of employment or conditions of labour of any person. Section 10 of the

Act lays down that where the appropriate Government is of the opinion that an industrial dispute exists or is apprehended, it may refer the dispute at any time by issuing an order in writing. Such reference may be made to a Board for settlement thereof. It may also refer any matter connected or related to a dispute to a Court of Inquiry or refer the dispute or any matter appearing to be connected with the dispute to a Labour Court for adjudication if it pertains to any matter specified in Second Schedule or the Tribunal if it relates to any matter specified in Second Schedule or the Third Schedule. Section 12 (1) makes it obligatory for the conciliation officer to hold conciliation proceedings in the prescribed manner where any industrial dispute exists or is apprehended. Section 12 (2) requires the conciliation officer to investigate the dispute and all matters affecting the merits and right settlement thereof and shall make all attempts to bring about a fair and amicable settlement of the dispute. If the settlement of the dispute or any of the matters in dispute is arrived at in the course of conciliation proceedings, a report to that effect is required to be sent to the appropriate Government together with a memorandum of settlement signed by the parties to the dispute. If the parties fail to arrive at a settlement, the conciliation officer should send a full report of the steps taken by him for ascertaining the facts and circumstances relating to the dispute and efforts made by him for bringing about the settlement and the circumstances and reasons on account of which, in his opinion, the settlement could not

be arrived at. The appropriate Government may thereafter make a reference if it is satisfied that there is a case for reference. Where the Government does not make a reference, it is obliged to record and communicate to the parties concerned the reasons for not making the reference. In this context, it is necessary to bear in mind that the power conferred upon the Government to make reference is not confined to an industrial dispute which has already come into existence but the government is also possessed with the power to make a reference if any industrial dispute is apprehended. Moreover, the government can exercise this power at any time. If the process of conciliation has been undergone, then, while exercising the power to make or not to make a reference of an industrial dispute, which exists or is apprehended, the government has to take into consideration the failure report of the conciliation officer submitted to it under Section 12 (4). However, the power to make a reference under Section 10 (1) is not contingent on the existence or receipt of the report of the conciliation officer and in an urgent case, the government can make reference without completion of the procedure contemplated under Section 12. The use of the expression 'at any time' in Section 10 (1) is extremely significant and there is no reason for the Court to interpret the scheme of Sections 10 and 12 in a manner which may operate as an impediment on the exercise of the power vested in the appropriate government to make reference of the dispute at any given point of time.

In **Shambu Nath Goyal v. Bank of Baroda** (supra), the Supreme Court referred to the definition of the term ‘industrial dispute’ and observed:

> “Thus, the term 'industrial dispute' connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.”

In **Western India Watch Co. v. Its Workmen**[16], the Supreme Court interpreted Section 4-K of Uttar Pradesh Industrial Disputes Act, 1947, which is pari materia to

Section 2(k) of the Act and held that the government can refer the dispute without completion of the procedure relating to conciliation etc. The facts of that case were that the appellant had terminated the services of the workman while he was on probation. The Western India Watch Company Workers Union took up the cause before the Regional Conciliation Officer, Bareilly, but no settlement could be arrived at between the parties. The State Government declined to make a reference for adjudication under the U.P. Industrial Disputes Act, 1947. Writ Petition filed by the workman was dismissed by the High Court. However, on a representation made by

the workman, the government reconsidered the matter and passed order dated

28-8-1963 whereby it referred the dispute to the Labour Court for adjudication, but the Labour Court rejected the same by observing that there did not exist any industrial dispute. This time, the workman and the union filed writ petition, which was allowed by the learned Single Judge. Appeal preferred by the appellant was dismissed by the Division Bench. One of the points urged on behalf of the appellant was that once the government had declined reference, there was no occasion for it to entertain the representation of the workman and make reference because the conciliation proceedings had already come to an end. The Supreme Court negatived this argument and observed as under:

> "From the words used in Sec. 4-K of the Act there can be no doubt that the legislature has left the question of making or refusing to make a reference for adjudication to the discretion of the Government. But the discretion is neither unfettered nor arbitrary for the section clearly provides that there must exist an industrial dispute as defined by the Act or such a dispute must be apprehended when the Government decides to refer it for adjudication. No reference thus can be made unless at the time when the Government decides to make it an industrial dispute between the employer and his employees either exists or is apprehended. Therefore, the expression "at any time", though seemingly without any limits, is governed by the context in which it appears. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the conciliation officer has made a failure report. But the Government need not wait until such a

procedure has been completed. In an urgent case, it can "at any time", i.e. even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression "at any time" thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed."

With the insertion of Section 2-A by the Industrial Disputes (Amendment) Act, 1965, an individual dispute in the matter of dismissal, discharge, retrenchment or termination of service, which was hitherto treated as an individual dispute, came to be treated as an 'industrial dispute'. In **Ruston & Hornsby (I) Ltd. v. T.B. Kadam**[17], the Supreme Court considered whether a dispute relating to termination of service of the workman, which existed prior to the insertion of Section 2-A, could be raised under that section and held:

> "The only relevant factor for consideration in making a reference under Section 10 is whether an industrial dispute exists or is apprehended. Where on the day the reference under Section 10 read with Section 2A was made an industrial dispute as defined under Section 2A did exist, the fact that the facts giving rise to the dispute, falling under Section 2A arose before that section came into force would not make the reference invalid. There is no question of giving retrospective effect to Section 2A. Section 2A is a definition section and when it uses the words "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman" it does not deal with the question as to when that was done. It refers to a situation or a state of affairs."

Sub-section (2) of Section 2-A, which begins with a non-obstante clause qua Section 10, removed all the bureaucratic hurdles in the raising of an industrial dispute by an individual workman in matters involving dismissal, discharge, retrenchment or termination of service. This sub-section facilitates direct making of application by the workman to the Labour Court for adjudication of the dispute referred therein. It lays down that on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute by deeming it to be a dispute referred to it under Section 10. The plain language of sub-section (2) of Section 2-A makes it clear that it is procedural in nature. This sub-section does not create any new right in favour of the workman. It merely lays down the mode of making an application for raising a dispute which is deemed as an industrial dispute by virtue of Section 2-A. What was earlier required to be done through the machinery of conciliation has been dispensed with. Now the individual workman can directly make an application and seek adjudication of the dispute relating to discharge, dismissal, retrenchment or termination of his service without going through the tardy and cumbersome procedure of conciliation.

The nature of sub-section (2) of Section 2-A was considered by a Division Bench of this Court in **Detergents India Ltd. v. Labour Court, Anantapur**[18]. The facts of that case were that the workmen were dismissed from service of the petitioner on

14-9-1981. They raised an industrial dispute by filing an application under Section 2-A (2) of the Act. The appellant challenged the maintainability of the application on the ground that dispute in relation to the termination of 1981 cannot be raised by filing an application under sub-section (2) of
Section 2-A, which cam into force with effect from 27-7-1981. According to the appellant, the remedy of the workmen was to raise an industrial dispute through the machinery of the Government under Section 10 and to undergo the process of conciliation. The learned Single Judge dismissed the writ petition filed by the appellant.
Before the Division Bench, it was argued that by virtue of sub-section (2) of Section 2-A, a new right was conferred on the workmen to directly make an application on the adjudication of industrial dispute and, thus, it was a substantive provision. It was further pleaded that sub-section (2) of
Section 2-A is not retrospective and application under the said sub-section can be filed only in respect of the dispute arising after 27-7-1987. It was further argued that if the workmen had raised industrial dispute, then they would have been required to get their dispute processed under Section 12 of the Act by going to the conciliation officer who would have made efforts to persuade the parties to settle dispute. If the conciliation failed, then the State Government would have got an occasion to consider whether the dispute was required to be referred under Section 10 of the Act. However, all these steps would get bypassed if sub-section (2) of

Section 2-A is held applicable to earlier dismissal, discharge, retrenchment etc. The Division Bench referred to the above extracted portions of the judgment of the Supreme Court in **Ruston & Hornsby (I) Ltd. v. T.B. Kadam** (supra) and observed:

> "Therefore, in the light of the aforesaid decision of the Supreme Court, the question posed for our consideration has to be answered against the appellant. Even otherwise, a mere look at sub-section (2) of Section 2-A shows that any workman who is specified in sub-section (1) of Section 2-A can make an application in the prescribed form directly to the Labour Court for adjudication of the dispute referred therein. Now, the workman referred to in sub-section (1) is an individual workman who has suffered discharge, dismissal, retrenchment or termination and the Supreme Court in the aforesaid decision has taken the view that such discharge, dismissal, retrenchment or otherwise termination as referred to in Section 2-A would cover even earlier discharges, dismissals, retrenchments or otherwise terminations prior to the enactment of Section 2-A. It necessarily follows that sub-section (2) of Section 2-A would also cover all such discharges, dismissals, retrenchments or otherwise terminations. It is also easy to visualize that even though workman might have been dismissed years back, so long as the dispute regarding such dismissal was not resolved either amicably by settlement between the parties or by adjudication by the competent Court, the dispute lingers on and it survives. During the lingering of such dispute whenever a procedural provision like sub-section (2) of Section 2-A is enacted, it would be too much to contend that the workman concerned, whose industrial dispute is lingering on, cannot utilize a procedural provision like sub-section (2) of Section 2-A. When we turn to the definition of the word

'industrial dispute', we find in Section 2(k) that it means "any dispute or difference between the employer and employees or between employers and workmen". The definition of 'workman' as found in Section 2 (s) includes any person who has been dismissed, discharged or retrenched in connection with or, as a consequence of, that dispute. Therefore, a dismissed workman agitating the question of his dismissal would be covered by the definition of 'workman' if he fulfils the other conditions of the said definition clause. For the purpose of the present controversy, it is not in dispute that the respondent No.2 was such a workman who was dismissed. Consequently, so long as his industrial dispute centering round the dismissal was not resolved under the Act or by an agreement, it lingered on. It is true that if earlier, the workman would have raised the industrial dispute, he would have been required to go via Sections 10 and 12. Merely because, he did not do so, it cannot be said that his industrial dispute vanished or got exhausted. It lingered on and in the meantime sub-section (2) of Section 2-A came on the statute book. It is difficult to appreciate how this provision can be treated to be a substantive one as argued by the learned counsel for the appellant. It is purely a procedural provision. It indicates the procedure for approaching the Labour Court for adjudication of the lingering industrial dispute between the workman and the employer; whether such dispute can be brought to the Labour Court via Section 10 machinery after taking preliminary step of going to the Conciliation Officer under Section 12 or whether such dispute can be brought to the Labour Court as per sub-section (2) of Section 2-A, it would indicate only the machinery provision or procedural provision for indicating the route through which the dispute must travel so as to enter the portals of the Labour Court, which is a competent Court, to adjudicate upon the dispute."

Rules of Interpretation and some judicial precedents:

In his celebrated work - **Principles of Statutory Interpretation (9th Edn.)**, - Justice G.P. Singh, while dealing with mandatory and directory nature of the statutes, observed:

> "The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage Lord Campbell said: No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered. (p. 338)
>
> For ascertaining the real intention of the legislature, points out Subbarao, J. the court may consider *inter alia*, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered. If object of the enactment

will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. (pp. 339-40)"

In **Sangram Singh v. Election Tribunal, Kotah**[19], the Supreme Court laid down the following rule of interpretation of procedural statutes:

"A Code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exception and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

In **Sushil Kumar Sen v. State of Bihar**[20], Krishna Iyer, J, in his concurring opinion made some observations on the enforcement of procedural law and

we can do no better than to reproduce the same:

> "The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex debito justiciae where the tragic sequel otherwise would be wholly inequitable."

In **State of Punjab v. Shamlal Murari**[21], the Supreme Court interpreted Rule 3 of the Punjab and Haryana High Court Rules and Orders, Volume 5, Chapter I-A, which provide that no appeal under Clause 10 of the Letters Patent will be received by the Deputy Registrar unless it is accompanied by three typed copies of the memorandum of appeal, judgment appealed from and paper book which was before the Judge from whose judgment the appeal is preferred. While interpreting the rule, the Supreme Court held:

> "It is true that, in form, the rule strikes a mandatory note and, in design, is intended to facilitate a plurality of Judges hearing the appeal, each equipped with a set of relevant papers. Maybe, there is force in the view taken by the Full Bench that certain basic records must be before the court along with the appeal if the court is to function satisfactorily in the exercise of its appellate power. In this sense, the needs of the rule transcend the directory level and may, perhaps, be considered a mandatory need. The use of shall a word of slippery semantics in a rule is not decisive and the context of the statute, the purpose of the prescription, the public injury in the event of neglect of the rule and the conspectus of circumstances bearing on the

> importance of the condition have all to be considered before condemning a violation as fatal."

Their Lordships further held that the omission to supply copies of the documents along with the copies of the memorandum of appeal was only on a regularity which could be rectified.

In **Raghunath Dass v. Union of India**[22], the Supreme Court considered the question whether a suit filed without serving notice in accordance with Section 80 of the Code of Civil Procedure was maintainable and answered the same in affirmative by assigning the following reasons:

> "The object of the notice contemplated by that section is to give to the concerned Governments and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised without litigation. The legislative intention behind that section in our opinion is that public money and time should not be wasted on unnecessary litigation and the Government and the public officers should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigations. The purpose of law is advancement of justice. The provisions in Section 80, Civil Procedure Code are not intended to be used as booby-traps against ignorant and illiterate persons. In this case we are concerned with a narrow question. Has the person mentioned in the notice as plaintiff brought the present suit or is he someone else? This question has to be decided by reading the notice as a whole in a reasonable manner."

In **Ghanshyam Dass v. Dominion of India**[23], the Supreme Court referred to the judgment in **Sangram Singh v. Election Tribunal, Kotah** (supra) and **Raghunath Dass v. Union of India** (supra) and held:

1) The whole object of serving a notice under Section 80 is to give the Government sufficient warning of the case which is going to be instituted against it and that the Government, if it so wished can settle the claim without litigation or afford restitution without recourse to a court of law. Though the terms of Section 80 have to be strictly complied with, that does not mean that the notice should be scrutinised in a pedantic manner divorced from common sense. The point to be considered is whether the notice gives sufficient information as to the nature of the claim such as would enable the recipient to avert the litigation. If the notice substantially fulfils its work of intimating the parties concerned generally of the nature of the suit intended to be filed, it would be sufficient compliance of the section. While interpreting the pre-amended section the courts must have due regard to the change in law brought about by sub-section (3) of Section 80, which shows legislative acceptance of the rule of substantial compliance instead of strict compliance.

2) The question as to whether a notice under Section 80 is valid or not is a question of judicial construction. Section 80 of the Code is but a part of which the courts may do justice between the parties. It is therefore, merely a part of the adjective law and deals with procedure alone and must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it. As far as possible, no proceedings in a court of law should be allowed to be defeated on mere technicalities. This is the

principle on which our laws of procedure are based."

In **Topline Shoes Ltd. v. Corporation Bank**[24], the Supreme Court considered whether the time frame provided under Section 13(2)(a) of Consumer Protection Act, 1986 was mandatory and whether reply filed beyond 45 days was liable to be discarded and held:

> "The intention to provide a time frame to file reply, is really meant to expedite the hearing of such matters and to avoid unnecessary adjournments to linger on the proceedings on the pretext of filing reply. The provision however, as framed, does not indicate that it is mandatory in nature. In case the extended time exceeds 15 days, no penal consequences are prescribed therefor. The period of extension of time "not exceeding 15 days," does not prescribe any kind of period of limitation. The provision appears to be directory in nature, which the consumer forums are ordinarily supposed to apply, in the proceedings before them. It cannot be said that in no event, whatsoever, the reply of the respondent could be taken on record beyond the period of 45 days. The provision is more by way of procedure to achieve the object of speedy disposal of such disputes. It is an expression of "desirability" in strong terms. But it falls short of creating of any kind of substantive right in favour of the complainant by reason of which the respondent may be debarred from placing his version in defence in any circumstances whatsoever."

In **Kailash v. Nanhku**[25], the Supreme Court considered the question whether the High Court can extend the time for

filing written statement in an election petition filed

under Representation of People Act, 1951. While answering the question in affirmative, the Supreme Court laid down the following principle:

> "It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words shall not be later than ninety days but the consequences flowing from non-extension of time are not specifically provided for though they may be read in by necessary implication. Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

The same view was reiterated by the Supreme Court in **Sk. Salim Haji Abdul Khayumsab v. Kumar**[26].

In **Banarsi Das v. Cane Commr. U.P.** [27], the Constitution Bench of the Supreme Court held that absence of signatures of the complaining party and omission to fill in the schedule appended to the agreement contemplated under Section 18 (2) of U.P. Sugar Factories Control Act, 1938 do not render the agreement invalid.

In the light of the above, we shall now consider whether Rule 11 (6) and Form K-4 are mandatory or directory.

Undisputedly, Rule 11 (6) forms part of the procedure prescribed for adjudication of an individual

dispute relating to workman, which is deemed as an industrial dispute under Section 2-A of the Act. Rule 11 (6) lays down that the workman who is discharged, dismissed, retrenched or otherwise terminated from service and who desires to directly approach the Labour Court for adjudication of his dispute shall submit application in Form K-4 duly signed by him with as many spare copies thereof as there are opposite parties. The very placement of this rule in the company of other rules relating to powers, procedures and duties of conciliation officers etc. is unequivocally indicative of its procedural character. Therefore, Form K-4 has to be treated as part of the procedure prescribed by the rule making authority for submission of application by a workman under sub-section (2) of Section 2-A of the Act. The object of incorporating the requirement of the workman serving a demand letter on the management in Form K-4 is to facilitate the possibility of pre-litigation settlement of the dispute relating to discharge/dismissal/retrenchment/termination of service. However, failure of the workman to serve demand letter on the management is not sufficient to denude the Labour Court of its jurisdiction to decide the dispute raised by workman in the matter of discharge/dismissal/retrenchment/termination of service. To put it differently, Rule 11 (6) and Form K-4 do not control the exercise of power by the Labour Court under Section 2-A (2) of the Act. Therefore, if the application filed by the workman discloses the

background of the action taken by the employer, which has resulted in termination of the workman's service by way of discharge/dismissal or retrenchment, the Labour Court is duty-bound to entertain and decide the dispute notwithstanding the fact that the application does not satisfy the requirement of Form K-4.

On the basis of the above discussion, we hold that Rule 11 (6) of the Rules and Form K-4 are not mandatory and failure of the workman to take steps enumerated in Form K-4 cannot be made a ground for dismissal of the application filed by him/her under Section 2-A (2) for adjudication of the dispute in relation to discharge / dismissal / retrenchment / termination of service.

Before concluding, we deem it proper to advert to the judgment of the learned Single Judge in **Oil and Natural Gas Corporation v. N. Satyanarayana** (supra). In that case, the petitioner had prayed for issue of a writ of prohibition to restrain the Central Government Industrial Tribunal-cum-Labour Court from adjudicating the cases filed by the workers who were employed by the contractor, namely, Godavari Industrial Workers Maintenance and Supervise Co-operative Society, Rajahmundry, which was engaged for execution of the project of the petitioner. The workers filed applications under Section 2-A (2) of the Act claiming that they were entitled to be treated as regular employees of the Corporation. The learned Single Judge examined the issue from different angles and ruled that there did not exist relationship of master and servant between the workers and the Corporation and, therefore, the

applications filed by them under Section 2-A of the Act were not maintainable. After having held so, the learned Single Judge dealt with the argument of the counsel for the employees that in view of Section 2-A (2), the application filed by the workers has to be treated as a reference under the Act for all practical purposes. The learned Single Judge observed that while Section 2-A is substantive, sub-section (2) thereof is procedural in nature and the same does not have the effect of restricting or expanding the scope of the substantive right created under Section 2-A and in the absence of sub-section (2), the only way for an individual worker to gain an entry into the Labour Court or Industrial Tribunal, even in the event of discharge, dismissal, retrenchment or termination was through the process of conciliation followed by reference under Section 10 (1). The learned Single Judge then referred to the contents of Form K-4 and held that when a special procedure is provided for in substitution of the one prescribed under the Act and when the application is required to be submitted in the prescribed form, any deviation therefrom is impermissible. In paragraph 36 of the judgment, the learned Single Judge observed as under:

> "36. The insistence on submission of a representation and furnishing of the information as to the response of the same is not without any purpose. But for Section 2-A (2), the workman was to undergo the ordeal of the reference under Section 10 (1). While relieving the workman of such an ordeal, section 2-A (2) had prescribed a basic minimum procedure or exercise which is compatible with the scheme of the I. D. Act. Just as it was not

> permissible for a reference by an appropriate Government without exhausting the process of conciliation, it was not permissible for the workmen to approach the Labour Court and Industrial Tribunal without submitting their representation as contemplated under Form K-4 before presentation of the application.”

In our opinion, the above underlined observations are contrary to the ratio of the Supreme Court’s judgments in **Shambunath Goyal v. Bank of Baroda** (supra) and **Western India Watch Co. v. Its Workmen** (supra) and the settled proposition of law that non-compliance of the procedural provisions cannot destroy the substantive right available to the party. Therefore, the view expressed by the learned Single Judge that an application filed under Section 2-A (2) cannot be entertained unless the same is in the prescribed form cannot be treated as correct and the observations contained in the above reproduced paragraph cannot be treated as good law.

We have not dealt with other judgments on which reliance has been placed by Sri Chari because they do not have any direct bearing on the interpretation of Section 2-A(2) of the Act and Rule 11(6) of the Rules read with Form K-4 or similar provisions.

In the result, the reference made by the learned Single Judge is answered in the following terms:

Rule 11(6) and Form K-4 of the Andhra Pradesh Industrial Disputes Rule, 1958 are not mandatory.

The writ petitions shall now be listed before an appropriate Single Bench for adjudication of other issues

raised by the petitioner.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

January 17, 2007

Note:

L.R. copy be marked.

(By order)

svs

PS to HCJ

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[1] 2003 (3) ALD 711

[2] AIR 1962 SC 113

[3] 1962 (2) LLJ 227

[4] AIR 1978 SC 1088

[5] (1996) 3 SCC 206

[6] AIR 1998 SC 179 = (1998) 2 SCC 81

[7] (2003) 6 SCC 401

[8] (2004) 6 Supreme 313 = (2004) 8 SCC 229

[9] (2005) 5 SCC 1

[10] (2006) 1 SCC 46

[11] 1957 (I) LLJ 27

[12] 1965 (I) LLJ 668

[13] AIR 1975 SC 2238

[14] Air 1995 SC 1715

[15] (2002) 10 SCC 224

[16] AIR 1970 SC 1205

[17] AIR 1975 SC 2025

[18] 1993 ALT Supp. (1) 232 (D.B.)

[19] AIR 1955 SC 425

[20] (1975) 1 SCC 774

[21] (1976) 1 SCC 719

[22] AIR 1964 SC 674

[23] (1984) 3 SCC 46

[24] AIR 2002 SC 2487

[25] (2005) 4 SCC 480

[26] (2006) 1 SCC 46

[27] AIR 1963 SC 1417